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No. 624

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

ROSE CADDEN, Petitioner

vs.

COMMONWEALTH OF KENTUCKY, Respondent

BRIEF FOR RESPONDENT IN OPPOSITION.

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INDEX.

Subject Index.

STATEMENT OF FACTS 1-5

1. Inquest 1
2. Mental Condition 2
3. Restoration 2-3
4. Petition to Vacate Judgment in the Trial Court 3-4
5. Appeal to the Court of Appeals 4-5
6. Petition for Re-Hearing 5

ARGUMENT 5-8

1. Certiorari Not Proper As No Federal Question Set Up Or Decided In Any Kentucky Court 5
   (Herb v. Pitcairn, 1945, 324 U. S. 117, 65 S. Ct. 459, 89 L. Ed. 789)
2. Federal Question Raised On Re-Hearing After Judgment And Neither Entertained Nor Decided By Court Is Not Basis For Review By Certiorari 8
   (Herndon v. Georgia, 295 U. S. 441, 79 L. Ed. 1530)

CONCLUSION 8

APPENDIX 8

Cases Cited.

Herb v. Pitcairn, 1945, 324 U. S. 117, 65 S. Ct. 459, 89 L. Ed. 789 7

Herndon v. Georgia, 295 U. S. 441, 79 L. Ed. 1530 8

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STATEMENT OF FACTS.

1. Inquest

On July 5, 1949, the Jefferson Circuit Court, Criminal Branch, conducted an inquest into the sanity of petitioner, Rose Cadden (hereinafter called Mrs. Cadden). Trial was by jury. Testimony was given by two Court-appointed doctors to the effect that Mrs. Cadden was suffering from paranoia, that she was violent and dangerous, would require hospitalization and that it was not in her best interest to require her attendance at the inquest. These two doctors had personally examined Mrs. Cadden within three days prior to the trial.

No stenographic record of testimony was made, but affidavits of witnesses and participating persons were later filed when the ensuing judgment was attacked.

A verdict of "unsound mind and a lunatic" was rendered and judgment was entered accordingly.

This action in Kentucky is statutory in nature and substantial, rather than strict, compliance to the statute was had. The statutory departure receiving the most emphasis later was that Mrs. Cadden had been notified of the pendency of the inquest by a "notice" instead of a "summons" as required by KRS 202.060.

Mrs. Cadden was committed to Central State Hospital, Lakeland, Kentucky, a public institution for the insane.

2. Mental Condition

Though not controlling on matters of certiorari, it should be noted that Mrs. Cadden was insane.

At the time of her commitment, Mrs. Cadden was a patient at the Louisville General Hospital, whose official diagnosis following an examination was "Paranoid Condition—considered potentially dangerous."[1]

While a patient at Central State Hospital, Mrs. Cadden was again thoroughly examined and it was the unanimous opinion of eight staff psychiatrists that she suffered "Dementia Praecox—Paranoid Type."[2]

3. Restoration

On February 21, 1950, while on parole from Central State Hospital Mrs. Cadden petitioned the Jefferson Circuit Court for restoration of her rights. No notice

[1] Report of Louisville General Hospital to Central State Hospital.
[2] Record, Central State Hospital.

was given to that hospital or to the Commonwealth, nor did either have knowledge of such petition.

The body of the petition is as follows:[3]

> "Comes Rose Cadden, petitioner herein, and states that on the 5th day of July, 1949, she was, in the Jefferson Circuit Court, Criminal Division, declared a person of unsound mind and a lunatic as appears of record in Lunacy Book # 67, page 187, of said Court. Subsequent to said adjudication, she was sent to the Central State Hospital for treatment and was parolled from said institution on July 20th, 1949.
>
> "Petitioner states that she believes she has fully recovered from any mental disorder, if any she had, and is fully capable of managing her own estate and prays the Court that a jury be empanelled to pass upon her present mental condition and for all proper orders."

The petition was granted.

4. Petition To Vacate Judgment In Trial Court

On May 23, 1950, Mrs. Cadden filed in the same Court a "Petition and Motion to Vacate Judgment of Insanity and Restoration", claiming the same to be a "clerical misprision and void."[4] This petition was amended and supplemented on November 22, 1950, bringing the grounds of attack against the lunacy judgment to a total of fifteen.[5]

Paragraph 14 thereof stated as follows:[6]

> "The record of this case shows conclusively that the defendant was not permitted to be in

[3] T. 7.
[4] T. 8.
[5] T. 85.
[6] T. 88.

> Court at her own inquest and the record is also silent as to why her personal appearance at the trial should have been dispensed with in violation of the constitutions of the State of Kentucky and the United States of America, and KRS 202.130."

This allegation was never referred to or pressed upon either the Trial Court of the Court of Appeals. It was abandoned. It is the only allegation of violation of the constitution that appears in the record.

- - - - - - - - -

Mrs. Cadden's contentions were simply that as the statute had not been complied with, the judgment was void. The constitutionality of the statute was never in dispute. No federal question was set up or decided.

The Commonwealth replied that even though the statute had not been complied with, Mrs. Cadden, by entering her appearance in her petition for restoration, had waived jurisdictional defects.

The Trial Court adopted the Commonwealth's argument and refused to vacate the judgment. Mrs. Cadden appealed.

5. Appeal to Court of Appeals.

The Court of Appeals heard the appeal upon the exact record made up in the Trial Court. This record was not analyzed by the Appellant (Mrs. Cadden) by bill of exception or any other device. The same argument was presented. Again no federal or constitutional question was specially set up or decided, nor was any drawn into issue.

The Court of Appeals affirmed and reasoned that Mrs. Cadden, by petitioning the Jefferson Circuit Court for a restoration, had re-opened the inquest

proceedings and had thereby "waived the jurisdictional question and estopped herself from saying she was never a party in court.'" The decision was based entirely upon adequate and proper State law.

6. Petition for Re-Hearing

In its written opinion, the Court of Appeals stated, 242 S. W. (2d) 413, "Therefore the judgment was void."

Mrs. Cadden petitioned for a re-hearing, contending:[8]

1. Void judgments cannot be validated by subsequent proceedings.
2. Restoration proceedings not part of original lunacy inquest.
3. Validation of void lunacy judgment deprived Mrs. Cadden of constitutional rights of trial by jury.

As Mrs. Cadden had received a trial by jury, and as contentions 1 and 2 had been decided and treated in its opinion, the Court of Appeals neither entertained nor decided any of these contentions and did not disturb its previous judgment.

ARGUMENT.

1. Certiorari Not Proper As No Federal Question Set Up Or Decided In Any Kentucky Court.

The foregoing review of proceedings clearly shows that no federal question was at any time specially set up or decided in any court below. The question in the

[7] See full quotation ante p. 6-7.
[8] Headnotes from Mrs. Cadden's brief on re-hearing.

case was purely one of local law and the decision thereon rests firmly upon well-known law.

The Court of Appeals recognized the issue, stating: (242 S. W. (2d) 411)

> "The substance of the grounds alleged are that Mrs. Cadden was not before the Court (because notice, not summons, served) and no judgment was entered in the order book." (Insert Supplied.

Its reasoning is clearly stated at 242 S. W. (2d) 414 and 415:

> "There is specific authority for the concept, above impliedly recognized in Upton's Committee v. Bush, supra, 135 Ky. 192, 121 S. W. 1005, that a proceeding for judicial restoration to competency is but a continuation of the original proceeding and that when further action is taken in which it is represented that a judgment of insanity exists and the court is asked to take hold of the case again and further pass upon the party's rights, the question or original jurisdiction is waived and the restoration proceeding precludes the party from going back and attacking the original judgment. In re Bishop's Conservatorship (Bishop v. Welch, 149 Ill. App. 491; Moats v. Moore, 199 Ill. App. 270; Cornett v. Cornett, 122 Mich. 685, 81 N. W. 920, Jorgensen v. Winter, 69 Wash. 573, 125 P. 957; Pope v. Bolin, 244 Ala. 322, 140 So. 382; State ex. rel. Bartlett v. Litrell, 325 Mo. 35, 26 S. W. (2d) 327, 121 A. L. R. 1506; 44 C. J. S., Insane Persons, § 55.
>
> "We think the motion by this petitioner to reopen the inquest, thereby invoking the action of the court for her benefit (the result being a judgment that she was then of sound mind) was the recognition by her as a person compos mentis that she had been legally adjudged insane. She did not

> then question the validity of that judgment as she might more consistently have done. She thereby waived the jurisdictional question, and estopped herself from saying she was never a party in court.
>
> "The judgment is affirmed."

Such was the entire scope of this appeal, and the decision thereof rests squarely upon adequate law.

The use of the word "void" instead of the word "voidable" in the sentence quoted before "Therefore the judgment is void" appears to have given rise to the petition for re-hearing as well as this petition for certiorari.

Although use of the word "voidable" might be more in conformity with the well-understood principle that voidable judgments may subsequently be cured, it is certainly fundamental that this Court is not constituted to edit or re-write opinions of other courts, and this Court may dis-regard a choice of language of no substantial significance. This court is concerned only with judgments. The judgment here would in no way be effected by a change in the wording of the opinion of the Court of Appeals.

This Court, in the case of Herb v. Pitcairn, 1945, 324 U. S. 117, 65 S. Ct. 459, 89 L. Ed. 789, stated:

> "This Court from the time of its foundation has adhered to the principle that it will not review judgments of state Courts that rest on adequate and independent state grounds . . . Our only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. And our power is to correct wrong judgments, not to revise opinions . . . In many cases the answer has been a strict adherence to the rule that it must affirmatively appear that the federal

question was decided and that its decision was essential to dispose of the case; and that where it is not clear whether the judgment rests on a federal ground or an adequate state one this Court will not review."

2. **Federal Question Raised On Re-Hearing After Judgment And Neither Entertained Nor Decided By Court Is Not Basis For Review By Certiorari.**

Herndon v. Georgia, 295 U. S. 441, 79 L. Ed. 1530:

"The long established general rule is that the attempt to raise a federal question after judgment upon a petition for re-hearing comes too late unless the Court actually entertains the question and decides it."

Mrs. Cadden's contention # 3 on re-hearing before the Court of Appeals did not present a federal question to that Court, nor was one decided. But, nevertheless, assuming for present purposes that such a federal question was presented, the above case holds that it was not presented in timely fashion.

CONCLUSION.

This Court cannot effectively review this case without creating a federal question, which the record does not and cannot produce.

APPENDIX.

The Commonwealth would be remiss in its duty to defend the integrity of its courts if it ignored petitioner's wantonly slanderous remarks and implications against its courts.

The petition attempts by use of a temporary custody opinion of a Chancellor of the Jefferson Circuit Court in a divorce proceeding to discredit and hold suspect the integrity of the Court of Appeals and more particularly Honorable Loraine Mix, Judge of the Jefferson Circuit Court, Criminal Branch, who presided over the inquest. An attempt as gross and as unfounded in fact as this is in itself a classic example of paranoid thinking and conduct.

A brief reference to the facts of Judge Mix's career on the Bench, plus the observation that he was sustained by the Court of Appeals upon full review, and the opinion of the Chancellor has not yet been accepted for similar review, should suffice.

Judge Mix is now beginning his nineteenth year on the Criminal Bench, having been elected by the largest majority for four consecutive terms. Public satisfaction in the conduct of his duties in office was clearly voiced in these majorities. In 1945, he was unopposed when standing for his third term. In his eighteen full years, Judge Mix has presided over more than 7,000 jury trials, over 5,000 of which involved felonies. **During this time he has been reversed only twice.**

In the same eighteen years, and in addition to the above jury trials of offenses against the State, Judge Mix has presided over 8,000 lunacy inquests. **On these he has never been reversed.** Judge Mix has established a firm and seldom-equalled reputation for fairness and judicial integrity, as well as a capacity to justly and efficiently administer the enormous press of business before his Court.

The same cannot be said for the Chancellor who failed to be re-elected after one term, and who wrote

the opinion referred to herein after defeat for re-election.

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